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July 22, 2014

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VIA E-MAIL AND U.S. MAIL

Jennifer Schembri
Deputy Director Employee Relations
Office of the City Manager, City of San
Jose
200 E Santa Clara St
San Jose, CA 95113
E-Mail: Jennifer.schembri@sanjoseca.gov

**Re: Retirement Board Governance – Follow Up to Step III Grievance
Meeting and This Further Demand to Meet and Confer**
File No.: 040507

Dear Jennifer:

Since I recall Alex mentioning he would be vacationing this week, I will direct this letter to your attention.

Thank you for the City team's input at the Step III grievance meeting we held last Thursday. The POA found the discussion useful in better understanding the City's position. As your team explained, the purpose of adding proposed sections 810(a) and (b) to the Charter is to give context to all of the other provisions that more specifically address the powers and duties of the Retirement Board.

As a reminder, the POA is not opposing any other aspect of the ballot proposal.

The POA reiterated its position regarding why the proposed changes to sections 810(a) and (b) are within the scope of bargaining, subject to meet and confer, and subject to Article 19 of the POA MOA. By placing procedures governing the number of Retirement Boards and their composition, which were formally contained in the Municipal Code (and hence subject to being superseded by a duly ratified MOA), directly into the Charter, the City is effectively attempting to take such procedures outside the scope of bargaining (at least under the presumptive City position that items in the City Charter could not be superseded by an MOA). We previously sent

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you the attached October 6, 1999 Agreement that the parties negotiated in 1999 concerning the composition of the Retirement Board.

The meeting did trigger thoughts and the POA is prepared to submit additional proposals. While the City team proposed simply acknowledging some POA concerns in the memorandum it will be preparing to the City Council ahead of its next meeting, the POA does not believe this adequately protects our members' interest. After all, the Retirement Boards are not simply another City department—they exist for the sole purpose of administering the retirement benefits of employees and retirees.

Thus the POA is prepared to hold our grievance in abeyance pending an opportunity to meet and confer and present proposals. As you know, although the POA has participated in one "stakeholder" meeting and one grievance settlement conference, it has not had an opportunity to meet and confer on this ballot proposal.

Please provide us with dates when the City is prepared to meet and confer as described above, and we will be prepared to formally acknowledge putting the grievance in abeyance.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

Enclosure

cc: Ed Shikada, City Manager
Charles D. Sakai Esq., Renne Sloan Holtzman & Sakai
Jim Unland, President, San Jose POA
John Robb, Vice President
Franco Vado, Chief Financial Officer, San Jose POA
James Gonzales, San Jose POA
Paul Kelly, San Jose POA

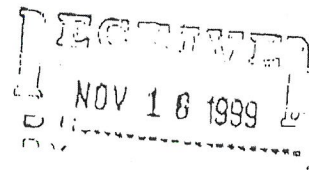
1. TENTATIVE AGREEMENT
NEGOTIATIONS REGARDING COMPOSITION
OF POLICE AND FIRE RETIREMENT BOARD

ORIGINAL

1. COMPOSITION

Increase Board from 5 to 7 members by adding:

- A retiree; and
- Member of the Administration (with some fiscal background) in a position of Deputy Department Head or higher



2. TERM OF OFFICE

Retiree Representative

- Four-year term
- Person may be appointed for second term
- If the Retiree Representative position has been held by retired members of the Fire Department for any consecutive eight-year period, the next appointment shall be a retired member of the Police Department, unless no retired member of the Police Department submits a nomination petition
- If the Retiree Representative position has been held by retired members of the Police Department for any consecutive eight-year period, the next appointment shall be a retired member of the Fire Department, unless no retired member of the Fire Department submits a nomination petition

Administration Representative

- Four-year term
- Person may be reappointed for subsequent terms

3. APPOINTMENT PROCESS

Process for selection of Retiree Representative includes the following:

- Eligibility limited to retirees only (not spouses, survivors or deferred vested)
- Nomination petition signed by 10 Police & Fire retirees (Process will be similar to the process for the employee representatives.)
- Election among retirees, conducted by City Clerk's Office, to determine a retiree to be recommended for appointment in the same manner as employee members are selected.
- A panel consisting of one representative each from the POA, Local 230, and the City Manager's Office would interview the three people with the highest number of votes. The purpose of the panel is to ensure that the candidates are viable, i.e., are able to attend meetings and fulfill the time commitment required of Board members.
- Panel makes recommendation(s) to City Council. If the panel unanimously agrees on a candidate, that candidate will be the panel's recommendation. If the panel recommends a candidate by a 2-1 vote, the candidate receiving two votes will be the panel's recommendation, and the dissenting member of the panel may submit a dissenting report. If there is no agreement on a candidate to recommend to Council, each panel member may submit its written recommendation to Council.
- The results of the recommendation of the voting retirees and the panel's recommendation will be reported to the City Council.
- City Council appoints a retiree to the Board
- In response to a request from the POA and Local 230, the Council should appoint a retired member of the Fire Department as the first retiree representative

Process for Administration member:

- City Manager makes recommendation to City Council
- City Council appoints Administration member to the Board

4. MID-TERM VACANCY

Retiree Representative

- Retiree Association recommends up to three candidates to the Board
- Board interviews candidates and makes recommendation to Council
- Council appoints a retiree to the Board to complete the remainder of the term

Administration Representative

- City Manager makes recommendation to City Council
- City Council appoints an Administration member to the Board to complete the remainder of the term

5. REMOVAL PROCESS

Current Municipal Code Sections:

- 2.08.050 Board or Commission seat vacancies
- 2.08.060 Absence from meetings
- 2.08.130 Removal from office
- 2.08.140 Temporary vacancies

Amend Section 2.08.130 so that the section does not apply to members of the Board. Amend the provisions relating to the membership of the Board so that any Board member could be removed for cause.

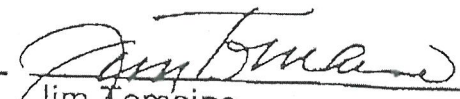
The POA, Firefighters Union or City Manager may submit a request for removal to the City Council. The request must state the grounds. The City Council would hold a hearing and if it concluded that cause for removal had been demonstrated by substantial evidence, it could remove the member.

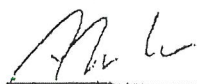
This tentative agreement is subject to ratification of each union and approval by the City Council.

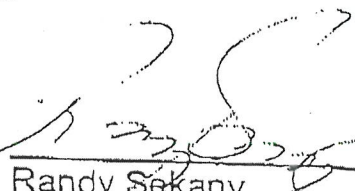
For the City:

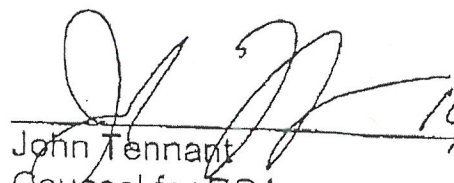
For the Unions:


Debra J. Figone
Assistant City Manager


Jim Tomaino
POA President

 10/6/99
Alex Gurza
Acting Employee Relations
Manager

 10/6/99
Randy Sekany
IAFF President, Local 230

 10/06/99
John Tennant
Counsel for POA

 10.6.99
Christopher Platten
Counsel for IAFF, Local 230